

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

ELDER ROBERTS, JR.,

Defendant.

Civil No. 2:20-cv-00077-RSM

ORDER OF FORECLOSURE SALE

In accordance with the Order Granting the United States' Motion for Default Judgment, [dkt. no. 16], the United States Marshal or Acting United States Marshal for the Western District of Washington (and his or her successor(s) in office) (hereafter "Marshal") shall sell the property located in Whatcom County, Washington, commonly known as 2915 Martin Road, Bellingham, Washington 98226, and more particularly described as:

That portion of Lot 10 described as the east 132 feet of the west 396 feet of the northwest quarter of the northwest quarter or the northwest quarter of Section 20, Township 39 North, Range 4 East, Willamette Meridian, Whatcom County,

ORDER OF  
FORECLOSURE SALE - 1  
Case No. 2:20-cv-00077-RSM

UNITED STATES ATTORNEY  
700 STEWART STREET, SUITE 5220  
SEATTLE, WASHINGTON 98101  
206-553-7970

1 Washington, containing 2.00 acres, more or less, together  
2 with an easement for ingress and egress, and utilities over,  
3 under, and across the north 30 feet of the west 264 feet of  
4 the northwest quarter of the northwest quarter of the  
5 northwest quarter of Section 20, as set forth in deed on file  
6 in this office [Bureau of Indian Affairs Land Titles and  
7 Records Office] under document number 111-109.

8 The Property is further identified as Tract no. 111-3904-Q by  
9 the Bureau of Indian Affairs.

10 (hereafter the "Property").

11 The procedures and terms shall be as follows:

12 1. The Marshal shall provide notice of this Order of Foreclosure Sale to  
13 Defendant Elder Roberts, Jr., and to any other resident(s) of the Property by hand  
14 delivery or by leaving a copy of it in a prominent location on the Property.

15 2. Further, the Marshal shall file his/her Return of this Order of  
16 Foreclosure Sale within ninety (90) days after the date of this Order, reporting the  
17 actions taken under this Order.

18 3. The sale shall be conducted in accordance with the law and practice  
19 of this Court.

20 4. The Marshal or Marshal's representative are authorized and directed  
21 under 28 U.S.C. §§ 2001 and 2002 to offer for public sale and to sell the Property.  
22 The Marshal or Marshal's representative are authorized to freely access the  
23 Property and take all actions necessary to preserve the Property, including, but  
24 not limited to, retaining a locksmith or other person to change or install locks or  
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1 other security devices on any part of the Property, until the deed to the Property is  
2 delivered to the purchaser at the foreclosure sale.

3         5.       The United States or any party to the suit may become a purchaser at  
4 the sale and the Marshal shall execute a Marshal's Certificate of Purchase to the  
5 Property in favor of the purchaser, and the purchaser will be let into possession of  
6 the premises upon production of the Marshal's Certificate of Purchase. In the  
7 event the United States, including its agency, the Department of Housing and  
8 Urban Development (HUD), is a successful bidder on the Property, it shall have  
9 the right to apply its judgment credits in lieu of cash thereon, and the Marshal is  
10 authorized to accept such an arrangement.

11         6. The terms of the sale of the Property shall be as follows:

12               a.       The sale of the Property shall be free and clear of the interest of  
13 Mr. Roberts, except to the extent that he has a right of redemption under  
14 Washington Revised Code chapter 6.23 or excess funds under Washington  
15 Revised Code chapter 6.21. The redemption period shall be 12 months.

16               b.       The sale shall be subject to 12 U.S.C. § 1715z-13a(h)(2), which  
17 allows sale of the Property only to "an eligible tribal member, the [Nooksack]  
18 [T]ribe, or the [Nooksack Housing Authority]." The sale shall also be subject  
19 to building lines, if established; all laws, ordinances, and governmental  
20 regulations (including building and zoning ordinances) affecting the  
21 Property; and easements and restrictions of record, if any.

1           c.       The sale shall be held at the courthouse of the county in which  
2 the Property is located, on the Property's premises, or at any other place in  
3 accordance with the provisions of 28 U.S.C. §§ 2001 and 2002 and shall be  
4 announced in the Notice of Sale.  
5

6           d.       The date and time for the sale shall be announced by the  
7 Marshal, or Marshal's representative, in the Notice of Sale.  
8

9           e.       The Notice of Sale shall be published once a week for at least  
10 four consecutive weeks before the sale in at least one newspaper regularly  
11 issued and of general circulation in Whatcom County, and, at the discretion  
12 of the Marshal or Marshal's representative, by any other notice deemed  
13 appropriate. The notice shall contain a description of the Property; the time,  
14 date, and location of the sale as determined by the Marshal or Marshal's  
15 representative; the minimum bid as determined by the United States; and  
16 the terms and conditions of sale listed in subparagraphs (g)-(l) below.  
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18           f.       The minimum bid for the Property shall be set by the United  
19 States. If the minimum bid is not met or exceeded, the Marshal or Marshal's  
20 representative, with concurrence of the United States, may without further  
21 permission of this Court, and under the terms and conditions in this order  
22 of sale, hold a new public sale, if necessary, and reduce the minimum bid as  
23 set by the United States, or sell to the highest bidder.  
24

25           g.       The sale of the Property shall be subject to confirmation by this  
26 Court. The Marshal shall file a report of sale with the Court, together with a  
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1 proposed order of confirmation of sale and proposed deed, within thirty (30)  
2 days from the date of receipt of the balance of the purchase price.

3 h. On confirmation of the sale, the Marshal shall execute and  
4 deliver a deed of judicial sale conveying the Property to the purchaser.

5 i. On confirmation of the sale, all interests in, liens against, or  
6 claims to, the Property and appurtenances that are held or asserted by all  
7 parties to this action are discharged and extinguished, except to the extent  
8 that Mr. Roberts has a right of redemption under Washington Revised Code  
9 chapter 6.23.

10 j. On confirmation of the sale, the recorder of deeds, the Bureau  
11 of Indian Affairs (BIA), U.S. Department of the Interior, shall cause transfer  
12 of the Property and appurtenances to be reflected upon the BIA's register of  
13 title.

14 k. Any party to this suit may become a purchaser at such sale.  
15 The United States may bid as a credit against its judgment without tender of  
16 cash.

17 1. The sale shall be "as is" without warranty of any kind.

18 7. Until the Property is sold, Mr. Roberts shall take all reasonable steps  
19 necessary to preserve the Property (including all buildings, improvements, fixtures  
20 and appurtenances on the Property) in its current condition including, without  
21 limitations, maintaining a fire and casualty insurance policy. He shall not commit  
22 waste against the Property or cause or permit anyone else to do so. He shall not

1 do anything that tends to reduce the value or marketability of the Property or  
2 cause or permit anyone else to do so. He shall not record any instruments,  
3 publish any notice, or take any other action (such as running newspaper  
4 advertisements or posting signs) that may directly or indirectly tend to adversely  
5 affect the value of the Property or that may tend to deter or discourage potential  
6 bidders from participating in the public auction, nor cause or permit anyone else  
7 to do so.  
8

9  
10 8. All persons occupying the Property shall leave and vacate the Property  
11 permanently within thirty (30) days of the date of this Order, each taking his or  
12 her personal property (but leaving all improvements, buildings, fixtures, and  
13 appurtenances to the Property). If any person fails or refuses to leave and vacate  
14 the Property by the time specified in this Order, the Marshal's Office is authorized  
15 to take whatever action it deems appropriate to remove such person from the  
16 premises. Specifically, the Marshal (or Marshal's designee) is authorized and  
17 directed to take all actions necessary to enter the Property at any time of the day  
18 or night and evict and eject all unauthorized persons located there, including Mr.  
19 Roberts, or any other occupants. To accomplish this and to otherwise enforce this  
20 Order, the Marshal (or Marshal's designee) is authorized to enter the Property and  
21 any and all structures and vehicles located thereon, and to use force as necessary.  
22 When the Marshal concludes that all unauthorized persons have vacated, or been  
23 evicted from the Property, the Marshal shall relinquish possession and custody of  
24 the Property to the United States, or more specifically to HUD, or its designee. No  
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1 person shall be permitted to return to the Property and/or remain thereon without  
2 the express written authorization by the Marshal, HUD, or the United States  
3 Department of Justice, or their respective representatives and/or designees.  
4  
5 Unauthorized persons who re-enter the Property during the time this Order is in  
6 effect may be ejected by the Marshal without further order of the Court.

7       9. If any person fails or refuses to remove his or her personal property  
8 from the Property by the time specified herein, the personal property remaining on  
9 the Property thereafter is deemed forfeited and abandoned, and the Marshal's  
10 Office is authorized to remove it and dispose of it in any manner it deems  
11 appropriate, including sale, in which case the proceeds of the sale of personal  
12 property are to be applied first to the expenses of the sale and the balance to be  
13 paid into the Court for further distribution.  
14

15  
16       10. The proceeds from the sale of the Property shall be paid to the Clerk  
17 of this Court and applied as far as they shall be sufficient to the following items, in  
18 the order specified:  
19

20           a. To the United States for the costs of the sale, including the costs  
21 and commissions of the United States Marshal and any professional  
22 auctioneer if retained and the costs of preserving, advertising, selling, and  
23 conveying the Property incurred by the United States.  
24

25           b. To the United States to be applied to the Judgment plus all interest  
26 and costs due and owing thereon.  
27

1 c. Any balance remaining after the above payments shall be held by  
2 the Clerk until further order of the Court.  
3

4  
5 DATED this 25<sup>th</sup> day of September, 2023.  
6

7  
8 

9 RICARDO S. MARTINEZ  
10 UNITED STATES DISTRICT JUDGE  
11  
12  
13  
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15 Presented by:

16 s/ Kyle A. Forsyth  
17 Kyle A. Forsyth, WSBA # 34609  
18 Assistant United States Attorney  
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28 ORDER OF  
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